Exhibit 7

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA, 15-CR-268(BMC)

Plaintiff, United States Courthouse
Brooklyn, New York
-against- September 27, 2017
9:30 a.m.

MUHANAD MAHMOUD AL FAREKH,

Defendant.
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TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
BEFORE THE HONORABLE BRIAN M. COGAN
UNITED STATES DISTRICT JUDGE
BEFORE A JURY

APPEARANCES

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Proceedings recorded by mechanical stenography. Transcript produced by computer-aided transcription.

(In open court; Jury not present.)

THE COURTROOM DEPUTY: All rise.

THE COURT: Good morning. Let's bring in the jury.

(Jury enters the courtroom.)

THE COURT: All right. Everybody be seated.

Good morning, ladies and gentlemen.

THE JURY: Good morning.

THE COURT: Ladies and gentlemen, now that the evidence in the case has been presented, it's my job to instruct you as to the law that governs this case.

You're going to be given a copy of these instructions that I'm reading to you when you go in to deliberate, so don't feel like you have to write everything down. They are fairly complex. But for now you should just listen. If you want to take notes, though, you're free to do that.

The instructions I'm going to give are you in three parts:

First, I'm going to instruct you on the general rules that define and govern the duties of a jury in a criminal case.

Second, I'm going to instruct you as to the legal elements of the crimes charged in the indictment; that is, the specific elements that the Government has to prove beyond a reasonable doubt to warrant a finding of guilt.

And then third, I'm going to give you some important principles that you'll use during your deliberations.

Now the first and the second part are very long. The third part is very short.

You're about to enter your final duty, which is to decide the fact issues in this case. Please pay close attention to me now. As I told you before, it's been very obvious to me, and to the lawyers in the case, and the parties, that you have faithfully discharged your duty to listen carefully and observe each witness who testified during the trial.

I want to thank you for that, and I want to thank the attorneys for their conscientious efforts on behalf of their clients. Please give me the same careful attention that you gave at trial as I instruct you on the law.

It's your duty to accept these instructions and apply them to the facts as you determine those facts. Don't single out any one instruction alone as stating the law. You have to consider my instructions as a whole when you go to deliberate in the jury room.

On these legal matters, you have to take the law as I give it to you, regardless of any opinion that you may have as to what the law is, or what you think it should be. It would violate your sworn duty to base a verdict on any view of the law, other than that which I'm about to give you.

If any attorney has stated a legal principle during their arguments to you that's any different from what I tell you during these instructions, you have to follow my instructions, not what the attorney said.

Now as members of the jury, you are the sole and exclusive judges of the facts. You could be wearing black robes just like this for the job that you're about to undertake.

You determine the credibility of the witnesses and resolve any conflicts that there may be in the testimony. You draw whatever reasonable inferences you decide to draw from the facts as you have determined them, and you determine the weight of the evidence.

In carrying out your duty, remember that you took an oath to render judgment impartially and fairly, without prejudice or sympathy, and without fear, solely based on the evidence in the case and the applicable law. I know that you're going to do that and reach a just and true verdict.

Now, as I told you at the outset of the case, I have no opinion on the verdict that you should render. If I made any kind of facial expression, or asked a question, or made a particular ruling that you think indicated that I have some view as to how you ought to resolve any issue that you have to resolve, you should disregard it because I wasn't trying to do that.

Similarly, you should not concern yourselves with, or speculate about, the contents of any discussion that I might have had with the lawyers, either while you were out of the courtroom or over here at sidebar.

In reaching your verdict, remember that all parties stand equal before a jury in the courts of the United States. The fact that the Government is a party, and that the prosecution is brought in the name of the United States, doesn't entitle the Government or its witnesses to any greater or lesser consideration than that accorded to the defendant. The parties, the United States Government, and the defendant, are all equal before this Court and they're entitled to equal consideration.

Now your verdict has to be based solely on the evidence, or lack of evidence, developed during the trial. You cannot be swayed by sympathy for any of the parties, or what the reaction of the parties, or the public to your verdict might be. It would be equally improper for you to allow any feelings you might have about the nature of the crimes charged against the defendant to influence you in any way.

You should not consider any personal feelings you may have about the race, religion, national origin, gender or age of any of the parties, or anyone participating in the trial. Your verdict will be determined by the conclusion that

you reach, no matter who it helps or hurts.

You also can't bear any prejudice against any attorney, or that attorney's client, because the attorney objected to the admissibility of evidence, or asked for a sidebar outside of your hearing, or asked me to make a ruling on a point of law. If you formed reactions of any kind to the lawyers in the case, whether favorable or unfavorable, whether you approved or disapproved of their behavior's advocates, those reactions should not enter into your deliberations. The personalities and conduct of counsel in the courtroom are not in any way in issue.

Now, I also want to tell you that Mr. Al Farekh's defense counsel were appointed and compensated by the Court. The reason I'm telling you this is to avoid any speculation on your part as to the source of funds for the defense. The source of payment for Mr. Al Farekh's lawyers should not enter into your deliberations in any way.

In addition, you shouldn't concern yourself with the possible punishment of the defendant if you decide to return a verdict of guilty. The duty of imposing a sentence, if there's a finding of guilt, rests exclusively with me and you must not let it influence your deliberations or the verdict that you reached.

Now let me turn now to the burden of proof by which you have to judge this case. Although the defendant has been

charged in an indictment, the indictment is only an accusation in a writing. It's entitled to no weight in your determination of the facts.

The defendant has pleaded not guilty to the indictment, and as a result, the burden is on the Government to prove guilt beyond a reasonable doubt. That burden never shifts to the defendant for the simple reason that the law never imposes on a defendant in a criminal case, the burden or duty of calling any witnesses, or producing any evidence, or even cross-examining witnesses.

The law presumes the defendant is innocent of the charges against him. I therefore instruct you that you have to presume the defendant to be innocent throughout your deliberations until such time, if ever, that you, as a jury, are satisfied that the Government has proven the defendant guilty beyond a reasonable doubt.

Now, this presumption of innocence alone is sufficient to acquit the defendant, unless you as jurors are unanimously convinced beyond a reasonable doubt of his guilt after a careful and impartial consideration of all the evidence in the case. This presumption of innocence was with the defendant when the trial began, it remains with him even now as I speak to you, and it will continue with the defendant into your deliberations, unless and until you're convinced that the Government has proven his guilt beyond a reasonable

doubt. If the Government fails to sustain that burden, then you have to find him not guilty.

Now, you have heard me say more than a few times that the Government has to prove the defendant guilty beyond a reasonable doubt. And the question naturally is, Well, what is a reasonable doubt? The words almost define them themselves. It's a doubt based on reason and common sense. It's a doubt that a reasonable person has after carefully weighing all of the evidence. It's a doubt that would cause a reasonable person to hesitate to act in a matter of importance in their own personal life. A reasonable doubt can arise from the evidence or from the lack of evidence.

Proof beyond a reasonable doubt, therefore, has to be proof of such a convincing character that a reasonable person would not hesitate to rely and act on it in the most important of their own personal affairs. A reasonable doubt is not an impulse or a whim. It's not a speculation or suspicion. It's not an excuse to avoid the performance of an unpleasant duty, and it is not sympathy.

As I told you, in a criminal case, the burden is at all times on the Government to prove guilt beyond a reasonable doubt. Now the law does not require that the Government prove guilt beyond all possible doubt. Proof beyond a reasonable doubt is sufficient to convict. But it is the Government's burden to prove each of the elements of the crimes charged,

which I'm going to explain to you, beyond a reasonable doubt.

If after a fair and impartial consideration of all the evidence, you have a reasonable doubt, then it's your duty to acquit the defendant. On the other hand, if after fair and impartial consideration of all the evidence you're satisfied of his guilt beyond a reasonable doubt, then you should vote to convict.

Now let me talk to you about the evidence in this case.

First of all, in determining the facts, it's your own recollection of the evidence that controls. The evidence on which you have to decide the case came in in three forms:

First, the sworn testimony of witnesses, both on direct and cross-examination.

Second, the exhibits that I received in evidence. And again, you may consider only the exhibits that I said "received" or I overruled an objection when the exhibit was admitted into evidence. There were some that were not.

And third, the stipulations between the parties. As I told you before, a stipulation is an agreement between the parties that certain facts are true. And you have to regard such agreed-on facts as true.

Let me remind you of certain things that are not evidence that have to be disregarded by you in deciding what the facts are.

Arguments, questions, objections, or statements by the lawyers are not evidence. Anything I may have said or done is not evidence. Anything you may have seen or heard outside the courtroom, I know you all made efforts not to see or hear anything outside the courtroom, but anything that you did see or hear is not evidence. In addition, when I sustained an objection or ordered that an answer be stricken, you have to disregard that answer in its entirety.

Now the Government presented some exhibits in the form of charts or summaries. Those charts were shown to you to make other evidence more meaningful and to aid you in considering the evidence. They're no better than the testimony or the documents on which they are based. And they are not themselves independent evidence. Therefore, you're to give no greater consideration to these charts or summaries, than you would to the evidence on which they are based.

It's for you to decide whether any charts or summaries correctly presented the information contained in the testimony, and in the exhibits on which they're based. You're entitled to consider the charts or summaries if you find they are of assistance to you in analyzing and understanding the evidence.

Remember, that if you decided to take notes during the trial, the notes should only be used by you as memory aids. You should not give your notes greater weight than your

independent recollection of the evidence. If you look at your notes and you go, that's not what I remember him having said, it's what you remember, it's not what's in your notes.

Now there are two types of evidence that you may properly use in deciding whether the defendant is guilty or not guilty. One type of evidence is called direct evidence. Direct evidence is where a witness testifies to what is known to that witness by virtue of the witness' senses; what the witness saw, heard, or observed.

The other type of evidence, circumstantial evidence, is evidence that tends to prove a fact by proof of other facts. Now there's a simple example of this distinction between direct and circumstantial evidence that we always use.

Let's assume when you came in this morning you saw it was raining outside. Well you have direct evidence that it was raining. You saw the water coming down with your own eyes. That's direct evidence. On the other hand, we're sitting in here with no windows. You don't know what's going on outside. But if someone walks in here carrying a dripping wet umbrella and wearing a dripping wet raincoat, you could conclude that it's raining outside. By the same token, if people are coming in with no raincoats and no umbrellas and everything is dry, you could conclude that it's not raining outside.

That's really all there is to it. It's entirely

permissible for you to conclude that a fact or set of circumstances exists, based on an absence of evidence. You infer on the basis of reason, experience and common sense from an established fact, the wet raincoat and umbrella, or the lack of an established fact, the lack of a wet raincoat or umbrella, the existence or nonexistence of some other fact; that is, whether it's raining outside or not.

The law doesn't make any distinction between direct and circumstantial evidence. Rather, it simply requires that before convicting the defendant, you must be satisfied of the defendant's guilt beyond a reasonable doubt based on all of the evidence in the case.

Now during the course of trial, you heard videotaped foreign and English language recordings and you saw documents that contained foreign writings. At times you heard from the recordings themselves, which had been translated for you, and you also heard from other witnesses that recounted some portion of the documents that were presented in foreign languages. For that reason, we had to get translations of those documents into English.

The translations of those portions of the documents and recordings embody the testimony of interpreters. As such, those portions of the material reflecting the foreign language to English translation have been admitted into evidence. You have to evaluate translators and interpreters as you do any

other witness, and you may accept or reject the testimony of any interpreter or translator. You may also accept or reject the accuracy of the transcript or the translation itself. If there's any discrepancy between a video that you saw in evidence and any transcript or translation that you saw in written form, you should rely on what you heard as the best evidence of the original speech.

Now, one more item on videotapes. You saw the videotaped testimony of a witness that was taken by deposition in another country. As I think I mentioned to you at the time, but I'll emphasize it here, that testimony has to be evaluated by you in exactly the same way as if the witness had appeared in this courtroom and testified in person from the witness stand. You can't treat that testimony any differently solely because of the form in which it was presented to you.

Now, several times already you've heard me use the term "inference," and in the lawyer's arguments they asked you to infer on the basis of your reason, experience and common sense, from one or more established facts, the existence or nonexistence, of some other fact. It's for you and you alone to decide what inferences you want to draw.

An inference is not a suspicion or a guess. It's a reasoned, logical decision to conclude that a fact exists on the basis of another fact that you know exists. It's a deduction or conclusion that you are permitted, but not

required, to draw from the facts that have been proven by direct or circumstantial evidence. You are not to engage in speculation based on matters that are not in evidence.

Now, although the Government bears the burden of proof beyond a reasonable doubt, and although a reasonable doubt can arise from lack of evidence, there is no requirements, no legal requirement, for the Government to use any specific investigative technique to prove its case. Law enforcement techniques are not your concern. Your concern is to determine whether or not, based on all the evidence in the case, the Government has proven that the defendant is guilty beyond a reasonable doubt as to each charge made against him.

In addition, the evidence before you was properly admitted and you should not concern yourself with the methodology used to obtain that evidence. Everything I let into evidence was properly let into evidence and you need not worry about that.

You may not draw any inference, favorable or unfavorable, towards either the Government or the defendant on trial from the fact that other persons were not charged as defendants in the indictment. You should draw no inference from the fact that any other person is not present at this trial. And you should not speculate as to the reasons why these individuals are not on trial before you. Your concern is solely the defendant who is on trial before you.

Now, I'm going to give you a copy of these instructions. The instructions quote from the indictment at various places. And when you read those quotes, you'll see that there's references to things happening on or about, or between certain dates. The proof does not need to establish with certainty the exact date of the alleged offense. And the Government doesn't have to prove that the defendant committed the acts that are charged throughout the entire period. Rather, the conduct during any part of the charged time frame is sufficient.

Now let me talk to you about witness credibility. You had the opportunity to observe all the witnesses. It's now your job to decide how believable each witness was in their testimony. As jurors, you are the sole judges of the credibility of each witness and the importance of their testimony.

As I'm sure it's clear to you by now, you're being called upon to resolve factual discrepancies. You're going to have to decide where the truth lies, and an important part of that decision will involve making judgments about the testimony of witnesses that you listened to and saw. In making those judgments, you should carefully scrutinize all the testimony of each witness, the circumstances under which each witness testified, and any other matter in evidence that may help you decide the truth and the importance of each

witness' testimony.

Your decision whether or not to believe a witness may depend on how the witness impressed you. Was the witness candid and frank? Or did it seem as if the witness was hiding something, being evasive or suspect in some way? How did the way the witness testify on direct examination compare with the responses of the witness on cross-examination? Was the witness' testimony consistent or inconsistent? Did it appear that the witness knew what the witness was talking about? Did the witness strike you as someone who was trying to report that witness' knowledge accurately?

How much you choose to believe a witness may also be influenced by the witness' bias.

Does the witness have a relationship with the Government or the defendant that may affect how the witness testified? Does the witness have some incentive, loyalty or motive that might cause the witness to shade the truth? Or does the witness have some bias, prejudice or hostility that may have caused the witness, consciously or not, to give you something other than a completely accurate account of the facts?

Evidence that a witness may be bias towards one of the parties requires you to view that witness' testimony with caution, to weigh it with great care, and subject it to close scrutiny.

How much you believe a witness may also be influenced by any interest that the witness may have in the outcome of the case. If a witness may benefit in some way from the outcome of the case, that interest may create a motive to testify falsely to advance that witness' own interest, whether those interests are personal or professional.

This is not to suggest that every witness who has an interest in the outcome of the case is going to testify falsely. It's for you to decide to what extent, if at all, the witness' interest has affected or colored that witness' testimony.

Even if you think a particular witness was not biased, you should consider whether the witness had an opportunity to observe the facts that the witness testified about, as well as the witness' ability to communicate effectively. Ask yourselves whether a witness' recollection of the facts stands up in light of all the other evidence.

In other words, what you have to try to do in deciding credibility, is to size a person up in light of that person's demeanor, the explanations given, and all the other evidence in the case, just as you would in any important matter where you're trying to decide if a person is truthful, straighted forward, and has an accurate recollection. You need to be guided by your common sense, your good judgment,

and your experience.

Now, you may have heard evidence that a witness made a statement on an earlier occasion that the attorney argues is inconsistent with the testimony of the witness that you heard at trial. If you find that a witness made an earlier statement that conflicts with or contradicts another statement the witness made, you may consider that fact in deciding how much of the trial testimony, if any, to believe. In making that determination, you may consider whether the witness purposefully made a false statement, or whether it was an innocent mistake; whether the inconsistency concerns an important fact, or whether it had to do with a small detail; whether the witness had an explanation for any inconsistency; and whether that explanation appeals to your common sense.

Now, the fact that the Government called more witnesses and introduced more evidence does not mean that you should find the facts in favor of the side calling more witnesses. It's not a numbers game.

By the same token, you don't have to accept the testimony of any witness, even if that witness was not contradicted or impeached, if you find that the witness wasn't credible. You do have to decide which witnesses to believe and which facts are true. To do this, you have to look at all of the evidence, drawing on your own common sense and personal experience.

Now the law doesn't require the Government to produce all available evidence, or call as witnesses all persons involved in the case who may have been present at any relevant time or place, or who may appear to have some knowledge of a matter at issue in the trial. Nor does the law require any party to produce as exhibits all papers and objects mentioned during the course of the trial. You're always entitled, however, to consider any lack of evidence in determining whether the Government has met its burden of proof beyond a reasonable doubt.

If you were to find that any witness has willfully testified falsely as to any material fact; that is, as to an important matter, then the law permits you to disregard the entire testimony of that witness based on the principle that somebody who testifies falsely about one material fact is likely to testify falsely about everything. However, you are not required to consider such a witness as totally unbelievable. You can accept as so much of the witness' testimony as you deem true and disregard what you feel is false.

By the processes that I've just described to you, you as the sole judges of the facts, are going to decide which witnesses to believe, what portion of their testimony you will accept, and what weight you're going to give to it.

Now you also heard testimony from current law

enforcement and military witnesses. The testimony of these witnesses should be evaluated in the same manner as the testimony of any other witness. The fact that the witness is or was a law enforcement agent or member of the armed forces, doesn't mean that the witness' testimony is entitled to any greater weight; but by the same token, a law enforcement or military witness' testimony is not entitled to less consideration just because the witness is or was a Government employee.

You should consider the testimony of Government employees just as you would consider any other evidence in the case and evaluate credibility just like you would that of any other witness. After reviewing all the evidence, you'll decide whether to accept the testimony of Government employee witnesses and what weight, if any, that testimony deserves.

Now there was some testimony at the trial that the attorneys for the Government interviewed witnesses when preparing for trial. You should not draw any inference, favorable or unfavorable, from that testimony. You need to understand that attorneys are entitled to and regularly do prepare their case as thoroughly as possible. And in the discharge of that responsibility, that properly includes interviewing witnesses before trial and is necessary throughout the course of the trial.

You also heard a witness who testified that he was

involved in planning and carrying out certain crimes. That witness testified pursuant to a cooperation agreement which provides that in exchange for agreeing to cooperate and testify, the witness' cooperation would be brought to the attention of the sentencing judge.

Now, Section 5K1.1 of the United States Sentencing Guidelines sets forth a framework for judges to use to determine the sentences of cooperating witnesses. Section 5K1.1 provides that the Government can make a motion, which can be in the form of a letter, stating that a defendant has provided substantial assistance in the investigation or prosecution of another person. That witness' sentencing judge may then consider the motion in deciding what sentence to impose. The judge may, but isn't required to, impose a sentence below the minimum sentence that would otherwise be required by law.

Two factors to keep in mind in this regard are, first, that only the Government can make such motions, and the Government can't be forced to do so, provided it has acted in good faith; and second, the sentencing judge has complete discretion as to whether or not to grant the motion to take the cooperation into account in determining the sentence. Thus, regardless of whether or not a 5K1.1 motion is made, the final determination as to the cooperating witness' sentence rests with the court and not with the Government.

The testimony of cooperating witnesses is of such a nature that it should be scrutinized by you with great care and viewed with particular caution when you decide how much weight that testimony should be given and whether or not you want to believe all or part of it. I gave you some considerations generally on credibility. I'm not going to repeat them here. Just let me say a few things you may want to consider during your deliberations on the subject of cooperating witnesses.

Ask yourselves whether this witness would benefit more by lying or by telling the truth. Was the cooperating witness' testimony made up in any way because he believed or hoped that he would receive favorable treatment by testifying falsely? Or did he believe that his interests would be best served by testifying truthfully?

If you believe that a cooperating witness was motivated by hopes of personal gain, was that motivation one that would cause him to lie? Or was it one that would cause him to tell the truth? Did this motivation color his testimony?

In sum, you need to look at all of the evidence in deciding what credence and what weight, if any, you want to give the testimony of the cooperating witness.

Now you also heard testimony about an out-of-court photographic identification. Identification testimony is an

expression of belief or impression by the witness who makes the identification. You should consider whether, or to what extent, the witness had the ability and the opportunity to observe the person at the time of the events, and to make a reliable out-of-court photographic identification later.

You should also consider the circumstances under which the witness later made that out-of-court photographic identification. Remember, the Government always has the burden of proving beyond a reasonable doubt that the defendant was the person who committed the crime charged.

Now, as you know, the defendant did not testify in this case. Under our Constitution, he has no obligation to testify or to present any other evidence, that's because it's the Government's burden to prove his guilt beyond a reasonable doubt. You may not attach any significance to the fact that the defendant did not testify. Nor may you draw any adverse inference against the defendant because he did not take the witness stand. In other words, in your deliberations in the jury room, you may not consider this decision against the defendant in any way.

Now, you also heard witnesses testify as experts about matters that are at issue in this case. A witness may be permitted to testify to an opinion. Witnesses usually can't testify as to opinions. But an expert may be able to, if he has special skill, experience, knowledge, or training.

That testimony is presented to you on the theory that someone who is experienced and knowledgeable in a particular field can assist you in understanding the evidence or in reaching an independenter decision on the facts.

In weighing that kind of opinion testimony, you may consider the witness' qualifications, the witness' opinions, the reasons for testifying, as well as all the other considerations that ordinarily apply when you're deciding whether or not to believe a witness' testimony and what weight, if any, you find the testimony deserves. You should not accept opinion testimony merely because I allowed the witness to testify concerning his opinion. Nor should you substitute it for your own reason, judgment and common sense. The determination of the facts in this case rests solely with you.

Now, as you heard throughout the trial, the acts alleged to have taken place occurred outside the United States. Nevertheless, American law provides that the defendant may be prosecuted here in the Eastern District of New York if you find, by preponderance of the evidence, that the defendant was first brought into the United States in connection with these charges within the Eastern District of New York. It does not matter if the defendant was brought to the United States involuntarily or in the custody of law enforcement officers. All that matters is was he brought into

this district.

To prove something by a preponderance of the evidence means to prove that it's more likely true than not true. It's determined by considering all the evidence in deciding which evidence is more convincing. If the evidence on this question of venue appears to be equally balanced, or you can't say on which side it weighs heavier, then you must resolve this question against the Government.

Proof by a preponderance of the evidence is a lower standard than proof beyond a reasonable doubt. This is the only time in the case; that is, in determining whether a defendant was brought into the United States in connection with these charges to this district that you can use the preponderance of the evidence standard to find that a legal element has been established. Everything else has to be found beyond a reasonable doubt.

All right. That completes the first section, ladies and gentlemen. I'm going to show you these instructions on the overhead screen just to help you follow along, they're a bit complex, please listen to me nevertheless and remember you will have a set of these instructions in the jury room.

The defendant is formally charged in the indictment. The indictment and each count refers to the defendant by his complete name, Muhanad Mahmoud Al Farekh, and alleged aliases: Abdullah al-Shami and Abdallah al-Shami.

As I instructed you, the indictment is a charge or accusation. It is not evidence. The indictment in this case contains nine counts or charges on which are you being called to render a verdict. Whether you find the defendant guilty or not guilty as to one count, however, should not affect your verdict as to any other counts. You have to consider each count separately and return a separate verdict of guilty or not guilty on each count.

Now I'm going to go over with you now the specific elements of each crime, each of which the Government has to prove beyond a reasonable doubt to warrant a finding of guilt here.

Every one of the charges implicates the concepts of knowledge and intent. As a general rule, the law holds individuals accountable only for conduct in which they intentionally engage.

A person acts knowingly if he acts intentionally and voluntarily, and not because of ignorance, mistake, accident, or carelessness. Whether a defendant acted knowingly may be proven by his or her conduct and by all the facts and circumstances surrounding the case.

A person acts intentionally when he acts deliberately and purposefully. That is, the defendant's acts must have been the product of his conscious objective rather than the product of a mistake or accident. It is sufficient

that a defendant intentionally engages in conduct in which the law forbids. The Government isn't required to prove that a defendant is aware of the law that actually forbids his conduct.

Now let me tell about the law of conspiracy. That covers Counts Two, Three, Four, Five, Six and Eight of the indictment.

A conspiracy is kind of a criminal partnership; a combination or agreement of two or more people to join together to accomplish some unlawful purpose. The crime of conspiracy to violate a federal law is an independent offense. It's separate and distinct from the actual violation of any specific federal laws. Conduct that violates specific laws and that is the object of the conspiracy, we refer to that as the "substantive crime" or the "substantive offense." You may find the defendant guilty of the crime of conspiracy to commit an offense against the United States even if you find the defendant not guilty of the substantive offense itself.

Before you may convict the defendant of conspiracy, the following two essential elements have to be established beyond a reasonable doubt:

First, that the conspiracy existed; and

Second, that the defendant knowingly and intentionally became a member of that conspiracy.

Let me go over each of those elements.

First as to whether a conspiracy existed. A conspiracy, as I just said, is an agreement between two or more persons to accomplish some unlawful purpose. The gist or essence of the conspiracy is the unlawful agreement to violate the law, whether or not the participants were successful in carrying out the objection of the conspiracy, it's the agreement itself.

A conspiracy is sometimes referred to as a "partnership in criminal purposes," where each member of the conspiracy becomes the agent of every other member of the conspiracy. To establish the existence of a conspiracy, the Government isn't required to prove that two or more persons entered into a solemn contract, orally or in writing, stating that they have formed a conspiracy to violate the law. The Government need only show that two or more persons explicitly or implicitly came to an understanding to achieve the specified unlawful object.

Of course, you could find that the existence of an agreement between two or more persons to commit a crime has been established by direct proof. But since a conspiracy is, by its very nature, characterized by secrecy, direct proof is often not available. Therefore, you may infer the existence of a conspiracy from the circumstances of the case and the conduct of the parties involved. In the context of conspiracy cases, actions can speak louder than words.

In determining whether or not the Government has proven the existence of a conspiracy beyond a reasonable doubt, you may consider the actions and statements of all of those whom you find to be participants. We refer to those people as the coconspirators. Ask yourselves whether the coconspirators were acting together to accomplish an unlawful purpose. If they were, the first element is satisfied. If, however, the coconspirators were acting together for some purpose unrelated to the substantive crime, the object of the conspiracy, then the Government would not have satisfied that first element.

Again, it's not necessary for the Government to prove that the ultimate objectives of a conspiracy were, in fact, successfully accomplished, it's enough that the Government has proved that to two or more persons, one of whom is the defendant, in any way expressly or impliedly came to a common understanding to violate the law.

If when you consider all the evidence, direct and circumstantial, you're satisfied beyond a reasonable doubt that the minds of at least two alleged coconspirators met and they agreed to work together to accomplish the object of the conspiracy charged in the indictment, then the first element, the existence of the conspiracy, has been established.

Now the second element that the Government has to prove beyond a reasonable doubt is that the defendant

knowingly and willfully became a member of a conspiracy; that he joined the conspiracy.

An individual may become a member of a conspiracy without full knowledge of all of the details of the conspiracy. However, merely being present at a place where criminal conduct is happening or mere association with one or more members of the conspiracy does not automatically make a person a member of the conspiracy to commit a crime. So a person who has no knowledge of a conspiracy, but happens to act in a way that furthers some objective or purpose of the conspiracy, doesn't automatically become a member of the conspiracy. Mere association by a defendant with a conspirator does not make the defendant a member of the conspiracy, even if he knows of the conspiracy. In other words, knowledge isn't enough. The law require that the defendant himself intentionally have participated in the conspiracy with knowledge of at least some of the purposes or objectives of the conspiracy, and with the purpose of helping to achieve at least one of the conspiracy's unlawful purposes.

The extent of a defendant's participation in a conspiracy doesn't bear on the issue of guilt. Some conspirators might play major roles. Others may play minor roles. An equal role is not what the law requires. In fact, even a single act may be enough to find the defendant guilty of conspiracy if that act was done knowingly and

intentionally. Moreover, a defendant doesn't need to know the identity of each and every member of the conspiracy, and he doesn't need to know everything the conspiracy intends to do. A defendant also doesn't have to be a member of the conspiracy for the entire time of the conspiracy's existence.

The key inquiry is whether the defendant joined the charged conspiracy with an awareness of at least some of the basic aims and purposes of the unlawful agreement and with the intent to help it succeed.

I'm now going to turn to the specific counts of the indictment. I emphasize again that you have to consider each count separately. You're going to be asked to render separate verdicts as to each count.

Now I'm going to go through these counts a little bit out of order, because I grouped them in a way that I think will make it easier to understand. You can do them out of order. You can do them together. You can select whatever order you believe makes the most sense.

Let me start with Count Two first.

Count Two of the indictment charges the defendant with conspiracy to commit murder of United States nationals. It alleges that the defendant, together with others, undertook the following overt acts to further the conspiracy: In or about January 2009, he assisted in the preparation of a vehicle-borne improvised explosive device for use in an attack

on a United States military base in Afghanistan. On or about January 19th, 2009, a coconspirator detonated a vehicle-borne improvised explosive device during an attack on a United States military base in Afghanistan. And, on or about January 19th, 2009, a second coconspirator drove a truck containing a second vehicle-borne improvised explosive device to a United States military base in Afghanistan but didn't detonate that explosive device.

The relevant statute, the law, to Count Two is Section 2332(b) of Title 18 of the United States Code, and that statute says the following:

Whoever outside the United States engages in a conspiracy to kill a national of the United States, in the case of a conspiracy by two or more persons to commit a killing that is a murder, and if one or more such persons do any overt act to effect the object of the conspiracy, then that person's guilty of a crime.

In order to prove that the defendant committed the crime charged in Count Two, the Government has to prove each of the following elements beyond a reasonable doubt:

First, that a conspiracy to murder one or more United States nationals existed;

Second, that the defendant knowingly and intentionally became a member of the conspiracy;

Third, that an overt act occurred; that is, someone

within the conspiracy, the defendant or some other coconspirator, took some action that advanced the goals of the conspiracy; and

Fourth, that the defendant engaged in this conspiracy while he was outside of the United States.

Now as to the first and second elements, I've already explained what it means to commit an offense, to have a conspiracy and to knowingly and intentionally become a member. Those same instructions apply here.

The third element is that an overt act occurred; that is, someone within the conspiracy took some action that advanced the goals of the conspiracy. This means that the Government has to prove beyond a reasonable doubt that at least one of the conspirators, not necessarily the defendant, committed at least one overt act in furtherance of the conspiracy. In other words, there must have been something more than an agreement. Some overt step or action must have been taken by the defendant or one of the conspirators in furtherance of the conspiracy. The overt act element, to put it another way, is a requirement that the agreement went beyond the mere talking and agreement stage. Someone did something to further it.

With respect to this overt act requirement, the Government may satisfy it by proving one of the overt acts alleged in the indictment, but it's not required to prove any

of those particular overt acts. It's enough that the Government proved that at least one overt act was committed in furtherance of the conspiracy, whether or not that particular act is alleged in the indictment.

Similarly, it's not necessary for the Government to prove that each member of the conspiracy committed or participated in the overt act. It is sufficient if you find at least one overt act was, in fact, performed by at least one coconspirator, whether the defendant or another coconspirator, to further the conspiracy within the time frame of the conspiracy.

Remember, as I've told you a couple minutes ago, the act of any one of the members of a conspiracy done in furtherance of the conspiracy becomes under the law the act of all the other members of the conspiracy. To be a member of the conspiracy, therefore, it's not necessary for the defendant to have committed the overt act.

Now, the fourth and final element is that the defendant engaged in the charged conspiracy while outside the United States. Thus, you must find that the defendant's illegal agreement to kill United States nationals existed outside of the United States and that the defendant knowingly and willfully engaged in that conspiracy while outside the United States.

For you to determine whether the Government has

proved the charged conspiracy, I need to explain the meaning of two phrases: "United States national" and "murder."

The "United States national," that just means a citizen of the United States.

"Murder" is the unlawful killing of a human being with what is called "malice aforethought." To act with malice aforethought means to act willfully with the intent to kill another person. "Willfully" means to act with knowledge that one's conduct is unlawful and with the intent to do something that the law forbids; that is to say with the bad purpose either to disobey or disregard the law. The defendant's conduct isn't willful if it's due to negligence, inadvertence, or mistake. However, the Government doesn't need to prove spite, malevolence, hatred, or ill will.

I remind you that this count does not allege that the murder of a United States national was actually committed, and the Government doesn't need to prove that the murder of a United States national was actually committed or attempted. Rather, Count Two charges the defendant with a conspiracy; that is, conspiring to murder United States nationals.

Let's go on to Count Three.

Count Three is conspiracy to use a weapon of mass destruction. It alleges in relevant part that in or about January 2009, within the extraterritorial jurisdiction of the United States, the defendant, without lawful authority, did

knowingly and intentionally conspire to use a weapon of mass destruction, here, an explosive device, against one or more nationals of the United States, here, U.S. military personnel in Afghanistan, or property that is owned, leased, or used by the United States, here, a U.S. military base in Afghanistan.

Now, the statute from the which Count Three comes is Section 2332a(a)(1) and (3) of Title 18 of the U.S. Code. It says that:

A person who, without lawful authority, uses, threatens, or attempts or conspires to use a weapon of mass destruction against a national of the United States -- again, that's a citizen -- while such national is outside the United States, or against any property that is owned, leased, or used by the United States, whether the property is within or outside of the United States is guilty of a crime.

Now, to prove that the defendant committed the crime charged in Count Three, the Government has to prove each of the following elements beyond a reasonable doubt:

First, that there was a conspiracy to use a weapon of mass destruction against a national of the United States while that national was outside the United States, or against property that is owned, leased, or used by the United States, wherever that property is located.

Second, the Government has to prove beyond a reasonable doubt that the defendant knowingly and

intentionally became a member of the conspiracy.

Now I've already explained what it means to conspire to commit an offense. I've told you about what a conspiracy is. Those same instructions apply here.

A "weapon of mass destruction" means a destructive device, including any explosive or incendiary bomb or similar device. As I told you earlier, "United States national" or "national of the United States" is simply a U.S. citizen. The term "outside of the United States" obviously includes Afghanistan.

Unlike the conspiracy charge in Count Two, there is no overt act requirement for Count Three. And you'll notice that some conspiracies require an overt act. Some do not. Count Two does. Count Three does not. This means that you can find the elements of Count Three satisfied without finding that an overt act was committed.

You don't need to find that the object of the conspiracy in this Count Three was to use a weapon of mass destruction against both a person and property. You just need to find beyond a reasonable doubt that the object of the conspiracy in Count Three was to use a weapon of mass destruction against either a person or property. However, you all have to be unanimous as to which one it is or if it's both. You all have to agree on that.

Now, Count Four charges the defendant with

conspiracy to use a weapon of mass destruction by a U.S. national. Specifically, Count Four alleges that in or about January 2009, within the extraterritorial jurisdiction of the United States, the defendant, as a national of the United States, without lawful authority, did knowingly and intentionally conspire to use a weapon of mass destruction, here, an explosive device, outside of the United States, again to attack a U.S. military base in Afghanistan.

The statute from which this Count Four comes from is Section 2332a(b) of Title 18. That statute states that:

Any national of the United States, who without lawful authority, uses, or threatens, or attempts, or conspires to use a weapon of mass destruction outside the United States, is guilty of a crime.

To prove that the defendant committed the crime charged in this Count Four, the Government has to prove each of the following elements beyond a reasonable doubt:

First, that a conspiracy to use a weapon of mass destruction outside the United States existed;

Second, that the defendant knowingly and intentionally became a member of that conspiracy;

And third, that the defendant is a national of the United States.

As to that first element, that a conspiracy to use a weapon of mass destruction outside the United States existed,

the conspiracy does not require that the defendant have intended the weapon to be used against any particular interest, whether U.S. or foreign, as long as he knew that the weapon would be used against some interest, and that the interest was located outside the U.S.

Now I've already told you about conspiracy. Use those same instructions on this charge.

I've already told you weapons of mass destruction and national of the United States. Use those same definitions here.

As with the conspiracy charge in Count Three, but not Count Two, this Count Four has no overt act requirement. Thus, you can find that the elements of Count Four are satisfied without finding any overt act.

Count Five is conspiracy to bomb a government facility. It charges that in or about January 2009, within the extraterritorial jurisdiction of the United States, the defendant, together with others, did knowingly and intentionally conspire to unlawfully deliver, place, discharge, or detonate one or more explosives and other lethal devices in, into or against a U.S. military base in Afghanistan, with the intent to cause death, serious bodily injury, and extensive destruction of the facility, where such destruction was likely to result in major economic loss.

The statute here is 2332f of Title 18. It states

that:

Whoever conspires to unlawfully deliver, place, discharge, or detonate an explosive or other lethal device, in, into or against a government facility is guilty of a crime.

To find the defendant guilty of conspiracy to bomb a U.S. government facility, you have to find that the Government has proven each of the following elements beyond a reasonable doubt:

First, that a conspiracy to deliver, place, discharge, or detonate an explosive in, into, or against one or more U.S. government facilities, specifically, a U.S. forward operating base in Afghanistan existed;

Second, that the defendant knowingly and intentionally became a member of that conspiracy;

And third, that there was federal jurisdiction over the offense.

Again, as to the first and second elements, I've explained to you what it means to have a conspiracy and to knowingly join it. Those same instructions apply here.

As to the third element, there's federal jurisdiction over an offense that occurred outside the United States if:

The defendant is a national of the United States, a U.S. citizen; or the intended victim or victims are nationals

of the United States; or the target of the offense was a government facility of the United States, including a military base.

You need to find only that one of these three facts was proven beyond a reasonable doubt to find that there's federal jurisdiction over the events. You don't need to find all the three. However, you have to be unanimous as to which one it is.

For you to determine whether the Government has proven the charged conspiracy, I have to explain briefly what it means to "bomb a Government facility" under this statute. To prove this, the Government has to establish the following elements beyond a reasonable doubt:

First, that the defendant unlawfully delivered, placed, discharged, or detonated an explosive in, into, or against a place of public use, or a state or government facility;

And two, that the defendant had the intent to cause death or serious bodily injury, or extensive destruction of that place or facility, where the destruction would result, or likely result, in major economic loss.

"Government facility" includes any permanent or temporary facility that is used or occupied by U.S. Government representatives. An "explosive" includes any explosive or incendiary device, such as "dynamite" and all other forms of

high explosives, including a bomb, grenade, missile, similar device, and any incendiary bomb or grenade, fire bomb, or similar device.

The second element that the Government has to prove beyond a reasonable doubt is that the defendant had the intent to cause either death or serious bodily injury, or extensive destruction of such place or facility, where such destruction results in or is likely to result in major economic loss.

The Government needs to prove only one of these objects; it doesn't have to prove both. However, you again must all be unanimous as to which one or both it has proved.

I don't need to define the word "death" for you. You know what that means. "Serious bodily injury" means bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

With respect to the "intent to cause extensive destruction" requirement, it's sufficient if the defendant's intent was to significantly damage the government facility. When determining whether the act resulted in, or was likely to result in, major economic loss, you may consider the likely physical damage to the government facility, as well as other types of economic loss, including the monetary loss or other adverse affects resulting from the interruption of the

facility's activities. You may also consider the adverse effects on the economy and the government.

Count Five doesn't allege that a bombing of a government facility was actually committed, and the Government doesn't need to prove that a government facility was bombed or even attempted to be bombed. Rather, Count Five, like Counts Two, Three and Four, charges the defendant with conspiracy; that is, conspiring and entering into and joining an agreement to bomb a government facility.

Now let me go backwards in the indictment to Count One.

Count One charges the defendant with the use of explosives, attempted use of explosives, or aiding and abetting the use of explosives. Specifically, Count One alleges, in relevant part, that on or about January 19th, 2009, within the extraterritorial jurisdiction of the United States, the defendant, together with others, did knowingly, intentionally, and maliciously damage or destroy, or attempt to damage or destroy, by means of fire and explosives, buildings, vehicles, or other personal or real property, in whole or in part, owned or possessed by, or leased to the United States, here, the military base in Afghanistan, causing personal injury or creating a substantial risk of injury.

The applicable statutes here's are Sections 844(f)(1) and (f)(2) of Title 18, and they state:

Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle or other personal or real property, in whole or in part, owned or possessed by, or leased to, the United States is guilty of a crime.

The Government has charged the defendant with this crime under several legal theories. One that is called "primary liability," and then two others that are "alternative theories of liability." The Government charged the defendant in the alternative with using explosives, that's the primary liability theory; attempting to use explosives, that's a secondary liability theory; and aiding and abetting the use of explosives, another secondary liability theory. These latter two are called the "alternative theories." The Government also has alleged a fourth theory, which is called "coconspirator liability." I'm going to go through each one of these.

First, to prove that the defendant violated Count One by using explosives, the Government has to prove each of the following elements beyond a reasonable doubt.

First, that the defendant, by means of fire or explosive, damaged or destroyed property;

Second, that the property was, in whole or in part, owned by, possessed by, or leased to, the United States;

And third, that the defendant acted maliciously.

The first element means that the Government must prove beyond a reasonable doubt that the defendant, by means of fire or explosive, damaged or destroyed property. I told you what "explosive" means; use that definition here.

To find beyond a reasonable doubt that the property in question was destroyed or damaged by an explosive, you don't need to find that the explosion actually occurred, you only need to find that the substance as used was such that when ignited it may cause an explosion.

The term "explosion" is used in its customary and ordinary sense; that is, an explosion is the rapid expansion of gases caused by a rapid combustion of a material which may cause a sharp noise.

If you find that the defendant damaged or destroyed property, by means of fire or explosive, as I have defined that term for you, the first element of the offense is satisfied.

Now the second element that the Government has to prove beyond a reasonable doubt is that the property that was damaged or destroyed was federal property. Federal property includes any building, vehicle, or other real or personal property in whole or in part owned, possessed, or used by the U.S. Government, or any of its departments or agencies, or any institutional organization receiving federal financial assistance.

The third element that the Government has to prove beyond a reasonable doubt is that the defendant acted maliciously, with malicious intent.

To act with malicious intent means to act either intentionally or with willful disregard of the likelihood that damage will result, and not by mistake or through carelessness. To find the defendant guilty, you must also find the defendant used the explosive with the intent to cause damage or harm, or that he did so recklessly and without regard to the likelihood that such damage or harm would result.

Now, if you find that the Government did not prove beyond a reasonable doubt that the defendant used explosives, the Government has three other theories on which it could still prevail. The first is the theory of "attempt." The second is the theory of "aiding and abetting." The third is "coconspirator liability."

If you find that the Government has not proven beyond a reasonable doubt that the defendant used explosives, then you should also consider whether the Government has met its burden of proving defendant's guilt beyond a reasonable doubt by considering the theories of attempt, aiding and abetting, and coconspirator liability. I remind you that the Government needs to prove only one of these alternatives for you to find the defendant guilty on Count One. The Government

doesn't need to prove all of them. So let me go through each one.

To find the defendant guilty of attempt, that is attempted use of explosives, the Government must prove the following two elements beyond a reasonable doubt:

First, that the defendant intended to commit the crime of using explosives;

And second, that the defendant did some act that was a substantial step in an effort to bring about or accomplish the crime.

Merely intending to commit a specific crime, without more, does not amount to an attempt. To convict the defendant of an attempt, you must find beyond a reasonable doubt that the defendant intended to commit the crime charged and that he took action that was a substantial step towards the commission of that crime.

Now, ladies and gentlemen, I know these instructions are long, but I want to be sure everyone's following me, everyone's still paying attention. Okay. That's good.

Now, in determining whether the defendant's actions amounted to a substantial step, it is necessary to distinguish between mere preparation on the one hand and the actual doing of the criminal deed on the other. Mere preparation, which may consist of planning the offense, or of devising, obtaining, or arranging a means for its commission, is not an

attempt, although some preparations may amount to an attempt. The acts of a person who intends to commit a crime will constitute an attempt when the acts themselves clearly indicate an attempt to commit a crime and the acts are a substantial step in the course of conduct planned to end in the commission of that crime. A defendant may be convicted of an attempt even where significant steps necessary to carry out the substantive crime are not completed.

Now, next theory. The defendant may also be found guilty on Count One if you find beyond a reasonable doubt that he aided and abetted the use of explosives. As I told you before, aiding and abetting, like attempt, is an alternate legal theory under which the Government can prove the defendant guilty of the crime charged in this Count One. You only need to consider this alternative if you find that the Government did not prove beyond a reasonable doubt that the defendant used explosives or attempted to use explosives.

The "aiding and abetting" statute provides that:

Whoever commits an offense against the U.S., or aids, abets, counsels, commands, induces or procures its commission is punishable as a principle; that is, as the one who committed the crime.

Under the aiding abetting statute, it's not necessary for the Government to show that the defendant himself physically committed the crime charged in Count One to

meet its burden of proof. This is so because, under the law, somebody who aids and abets somebody else to commit an offense is just as guilty of that offense as if he committed it himself.

Accordingly, you can find the defendant guilty of the offense charged in Count One if you find beyond a reasonable doubt that the Government has proven that another person actually committed the offense with which the defendant is charged, and that the defendant aided or abetted that person in the commission of the offense.

To find the defendant guilty of aiding and abetting a crime, you have to first find that some person did actually commit the crime charged. So it's different in that way than attempt. Obviously, no one can be convicted of aiding or abetting the criminal acts of another if no crime was committed by the other person in the first place. But if you do find that a crime was committed, then you must consider whether the defendant aided or abetted the commission of that crime.

To aid or abet another person to commit a crime, it's necessary that the defendant knowingly associate himself in some way with the crime, and that he participate in the crime by doing some act to help make the crime succeed. To establish that the defendant knowingly associated himself with the crime, the Government has to establish that the defendant

knew and intended that the crime charged in Count One be committed.

To establish that the defendant participated in the commission of the crime, the Government must prove that the defendant engaged in some affirmative conduct or overt act for the specific purpose of bringing about that crime.

The mere presence of the defendant where a crime is being committed, even coupled with knowledge by the defendant that a crime is being committed, or merely associating with others who were committing a crime, is not sufficient to establish aiding and abetting. One who has no knowledge that a crime is being committed or is about to be committed but inadvertently or accidentally does something that aids in the commission of that crime, isn't an aider or abettor. An aider and abettor must know that the crime is being committed and act in a way which is intended to bring about the success of the criminal venture.

To determine whether the defendant aided or abetted the commission of the crime charged in Count One, or caused the commission of that crime, ask yourself these questions:

First, did the defendant participate in the crime charged as something he wanted and wished to bring about?

Second, did the defendant knowingly and willingly associate himself with the criminal venture?

And third, did the defendant seek by his actions to

make the criminal ventures succeed?

If he did, then the defendant is an aider and abettor and guilty of the offense. If, on the other hand, he didn't, then he's not an aider and abettor and you must find him not guilty on this aiding and abetting theory under Count One.

(Continued on next page.)

THE COURT: Now, let me keep going through the alternatives.

If you do not find that the Government has proven beyond a reasonable doubt each element of Count One as the to defendant's personal participation in either using explosives, attempting to use explosives, or aiding and abetting somebody else in the use of explosives, then you must evaluate the possible guilt on Count One on the basis of what is called co-conspirator liability. If you find that the Government has proven beyond a reasonable doubt that the defendant was a participant in the conspiracy charged in Count Five, conspiracy to bomb a Government facility, then under certain specific conditions that I'm going to explain to you, you may, but are not required to, find the defendant guilty of the substantive crime charged against him in Count One under the theory of co-conspirator liability. To find the defendant guilty using this theory of co-conspirator liability. You, have to find that the Government has proven beyond a reasonable doubt each of the following five additional elements.

First, of that someone in fact committed the substantive crime charged in Count One.

Second, that the person or persons who committed that substantive crime charged in Count One were members of the conspiracy charged in Count Five.

Third, that the commission of the substantive crime charged in Count One was pursuant to a common plan and understanding that you found to exist among the conspirators.

Fourth, that the defendant was a member of that conspiracy charged in this Count Five at the time that the substantive crime charged in Count One was committed.

And Fifth, that the defendant could have reasonably have foreseen that one of his co-conspirators might commit the substantive crime charged in Count One. An offense by a co-conspirator is deemed to be reasonably foreseeable if it is a necessary or natural consequence of the unlawful agreement.

If you find that the Government has proven all five of these elements beyond a reasonable doubt then you may find the defendant guilty of the substantive crime charged in Count One, even if the defendant did not personally participate in the acts constituting the crime and even if he did not have actual knowledge of it, but only if that offense was foreseeable to the defendant.

The reason for this rule, this theory, is simply that a co-conspirator who commits a substantive crime pursuant to a conspiracy is regarded as a partner of the other co-conspirators. Therefore, all of the co-conspirators must bear criminal responsibility for the commission of the foreseeable substantive crimes committed by the conspiracy's members.

If, however, you're not satisfied as to the existence of any of these five elements beyond a reasonable doubt, then you may not find the defendant guilty of the substantive crime charged in Count One, unless the Government proves beyond a reasonable doubt that the defendant personally committed, attempted to commit, or aided or abetted the commission of the crime.

So what I just said, ladies and gentlemen, that brings you back to the other theories that I went through previously. If you find that the Government has proven the defendant's guilt on Count One beyond a reasonable doubt, whether you find that he committed the crime, or he attempted to commit the crime, or he aided and abetted the commission of the crime, or is liable under the theory of co-conspirator liability that I just explained, then there is one more issue for you to decide. You'll see this question on the verdict form that I give you. It asks to you indicate whether the Government has proven that the defendant's actions directly or proximately caused personal injury or created a substantial risk of injury to any person.

"Directly caused" means that the conduct of the defendant or a co-conspirator directly resulted in the injury in question.

"Proximately caused" means there had to have been a sufficient causal connection, causation in fact, between some

member of the conspiracy and the injury to any victim. An act is a "proximate cause" if it naturally and probably led to and might have been expected to produce the injury, or if a reasonable person would regard the act as the cause of the injury.

"Personal injury" means any injury, no matter how temporary. It includes physical pain, as well as any burn, cut, abrasion, bruise, disfigurement, illness or impairment of a bodily function.

An act creates a "substantial risk of injury" if it's substantially likely to produce an injury to any person, whether or not the injury results.

All right. Let me talk to you about Count Six and Seven, which has some overlaps so that we'll discuss them together. Count Six charges the defendant with conspiring to provide material support to terrorists, while Count Seven charges the defendant with providing or attempting to provide material support to terrorists. Specifically, Count Seven of the Indictment alleges that "in or about and between December 2006 and October 2014, both dates being approximate and inclusive, within the extraterritorial jurisdiction of the United States" the defendant, together with others, did knowingly and intentionally provide or attempt to provide material support and resources, including providing himself or others, knowing and intending that they were to be used in

preparation for or in carrying out one or more of the following violations of Title 18.

First, killing or attempting to kill U.S. military personnel while such officers and employees were engaged in or on account of the performance of their official duties.

Two, killing a national of the United States, here, U.S. military personnel stationed outside of the U.S.

Three, while outside the U.S. attempting or conspiring to kill a national of the U.S., here U.S. military personnel.

Count Six charges the defendant with conspiring to commit the same offense during the same time frame. Now the statute relevant to both of these counts, Six and Seven, is section 2339(A)(a). It says that, "Whoever provides material support or resources knowing or intending that they are to be used in preparation for or in carrying out a violation of section 1114 or 2332, is guilty of a crime."

Now because Count Seven is the substantive offense and Count Six is conspiracy to commit that substantive offense, I'm going to explain them to you in reverse, Count Seven first.

In Count Seven the Government has charged the defendant in the alternative with either providing or attempting to provide material support to terrorists. To find the defendant guilty of Count Seven, you have to find that the

Government has proven that the defendant either provided material support to terrorists or that he attempted to do so. The Government doesn't have to prove both.

To prove a violation of Count Seven for providing material support to terrorists, the Government has to establish each of the following elements beyond a reasonable doubt.

First, the Government has to prove that the defendant provided material support or resources including himself or others. The term "material support or resources" includes personnel, people. The term "personnel" means one or more persons, which can include the defendant himself. The material support that triggers this offense does not need to be support to any particular person or specified group. Instead, the material support or resources must be given in furtherance of a criminal offense. If you find that the defendant made himself or other persons available to the charged offense, then this element is satisfied.

Second, the Government has to prove that the defendant provided such material support or resources knowing or intending that they were to be used to prepare for or carry out a violation of any of the three sections I stated earlier; that is, 1114, which prohibits killing or attempting to kill U.S. personnel while they are engaged in their duties; or 2332(a), which prohibits killing a U.S. citizen while that

citizen is outside the U.S; or 2332(b), which prohibits while someone is outside the United States attempting to kill a U.S. citizen.

You don't need to find that the defendant new any particular statute would be violated. Instead, you must find the defendant knew or intended that his actions would result in the type of conduct forbidden under the statutes as I've just described them to you.

You don't need to find that the defendant knew and intended that the material support or resources be used to prepare for or carry out all of these three objectives. You must, however, be unanimous as to which objective or objectives you find that the defendant intended the material support or resources to be used for or to carry out -- sorry, to be used to prepare for or carry out. "Preparation" has the same meaning that you use in your lives everyday, to make ready. "Carrying out" also has the same everyday meaning, to act or to do.

Now for the objectives that involve killing or attempting to kill U.S. nationals or officers or employees of the U.S. The Government doesn't need to prove that the underlying crime was in fact committed. So long as the defendant provided the material support or resources with the knowledge or intent that that support or resources be used to prepare for or carry out one of these objectives. For you to

find that the defendant provided material support or resources to prepare for or carry out conspiracy to kill a national of the U.S. while outside the United States, then you must find that the Government has proven the existence of that conspiracy beyond a reasonable doubt, whether or not the defendant was a participant in that conspiracy. In other words, the Government needs to prove only that the conspiracy to kill U.S. nationals existed. The Government doesn't have to prove that the defendant joined in it. The elements of that conspiracy are:

First, that there was a conspiracy to kill U.S. nationals, whether or not the defendant joined it.

Second, that an overt act was committed in furtherance of this conspiracy, that is, that at least one member of the conspiracy took some action to advance the goal or goals of the conspiracy.

And Third, that someone engaged in the conspiracy while outside the United States.

Now, to prove the charge of attempted provision of material support to terrorists, which is the alternative theory that the Government has offered for Count Seven, the Government has to prove the following two elements beyond a reasonable doubt.

First, that the defendant intended to commit the crime of providing material support to terrorists as I've

explained above.

And Second, that the defendant did some act that was a substantial step in an effort to bring about or accomplish the crime.

I've already instructed you on what it means to attempt to commit a crime, apply those instructions here to Count Seven.

As to Count Six, conspiracy to provide material support to terrorists, the Government has to establish each of the following elements beyond a reasonable doubt.

First, that a conspiracy to provide material support to terrorists as described above in Count Seven existed.

Second, that the defendant knowingly and intentionally became a member of that conspiracy. Those are the two elements.

Since I've already told you the elements of a conspiracy, I'm not going to repeat them again here.

If you find that the Government has proven beyond a reasonable doubt that the defendant is guilty on Count Six, that is, conspiring to provide material support to terrorists, but not that the defendant has provided or attempted to provide material support to terrorists as charged in Count Seven, then you must also evaluate the defendant's possible guilt on Count Seven using the theory of co-conspirator liability that I previously explained to you. Just to remind

you of those elements defined co-conspirator liability, you have to find that the Government has proven beyond a reasonable doubt each of the following five additional elements.

First, that someone in fact committed the substantive crime charged in Count Seven.

Second, that the person or persons who committed that substantive crime in Count Seven were members of the conspiracy charged in Count Six.

Third, that the commission of the substantive crime charged in Count Seven was pursuant to a common plan and understanding that you found to exist among the conspirators.

And Fourth, that the defendant was a member of that conspiracy charged in Count Six at the time the substantive crime charged in Count Seven was committed.

And fifth, that the defendant could reasonably have foreseen that one of his co-conspirators might commit the substantive crime charged in Count Seven.

If you find that the Government has proven all five of these elements beyond a reasonable doubt, then you may find the defendant guilty of the substantive crime charged in Count Seven, even if the defendant did not personally participate in the acts constituting the crime and even if he did not have actual knowledge of it, so long as the offense in Count Seven was reasonably foreseeable to him.

Now I'm going to put Counts Eight and Nine together because they also overlap. Eight, charges the defendant with conspiring to provide material support to a foreign terrorist organization, in particular al-Qaeda, while Count Nine of the Indictment charges the defendant with providing and attempting to provide material support to a foreign terrorist organization, in particular al-Qaeda. Specifically, Count Nine of the Indictment alleges that "in or about and between December 2006 and October 2014, both dates being approximate and inclusive, within the extraterritorial jurisdiction of the U.S.," the defendant together with others did knowingly and intentionally provide or attempt to provide material support or resources, including himself or others, to the foreign terrorist organization, al-Qaeda, which has been designated by the Secretary of State as a foreign terrorist organization since October 1999, and that defendant provided those resources knowing that al-Qaeda was a designated terrorist organization and that al-Qaeda had engaged in and was engaging in terrorist activity and terrorism. Count nine further alleges that the defendant is a national of the United States, that the offense occurred in and affected interstate and foreign commerce, and that, after providing that support the defendant was brought into and found in the United States.

Count Eight charges the defendant with conspiracy to commit the same offense during the same time frame. That

statute for Count Eight says, whoever knowingly provides material support or resources to a foreign terrorist organization or attempts or conspires to do so, is guilty a crime. Because Count Nine is the substantive offense and Count Eight is the conspiracy to commit that substantive offense, I'm going to explain them to you in reverse like I did in Six and Seven.

Count Nine charges the defendant in the alternative with either providing or attempting to provide material support to a foreign terrorist organization. To find the defendant guilty of Count Nine you have to find that the Government has proven that the defendant either provided material support to a foreign terrorist organization, or that he attempt to do so. The Government does not need to prove both.

To prove a violation of Count Nine for providing material support to al-Qaeda, the Government must establish each of the following elements beyond a reasonable doubt.

First, that the defendant provided material support or resources.

Second, that the defendant provided the support or these resources to a foreign terrorist organization, specifically al-Qaeda.

Third, that the defendant did so knowingly and intentionally.

And Fourth, that there was federal jurisdiction over the offense.

I'm going to go through each one of these elements. The first element is that the defendant provided material support or resources. The defendant can be convicted for a violation of this statute in connection with providing personnel if you find that he has knowingly provided one or more individuals, which may include himself, to work under al-Qaeda's direction or control. However, the defendant can't be convicted if he were entirely independent of al-Qaeda to advance its goals and objectives. I've already defined the terms "material support or resources" and "personnel" and you should apply those definitions on this count.

The second element that you have to find beyond a reasonable doubt is that the defendant provided these resources to a foreign terrorist organization; namely, al-Qaeda. I instruct you as a matter of law that al-Qaeda is in fact designated as a foreign terrorist organization. That was done by the U.S. Secretary of State on October 8, 1999. For that reason, if you find beyond a reasonable doubt that the defendant provided material support or resources, as I've just defined those terms, to al-Qaeda during the period charged in the Indictment, the Government's burden with respect to the element of foreign terrorist organization will have been met.

The third element that you must find beyond a reasonable doubt is that in providing material support or resources to al-Qaeda, the defendant did so knowingly and intentionally. I previously explained to you what "knowingly" and "intentionally" means, use those definitions. For this element to be satisfied the Government must prove that the defendant knew one of the following three things.

First, that al-Qaeda had been designated by the Secretary of State as a foreign terrorist organization.

Or Two, that al-Qaeda engaged in terrorist activity.

Or Three, that al-Qaeda engaged in terrorism.

For these purposes the term "terrorist activity" includes any of the following actions:

Hijacking, or sabotage of an aircraft, vessel, vehicle, train or other conveyance.

Seizing, detaining or threatening to kill, injure or further detain another person to compel or coerce some third-party, including a Government, to do or abstain from doing some act.

Three, a violent attack on an internationally protected, person including employees and officials of Governments or international organizations.

Four, assassination.

Five, use of any chemical, biological or nuclear weapon or device with intent to endanger directly or

indirectly, the safety of one or more individuals or to cause substantial damage to property.

Six, using any explosive, firearm or weapon or other dangerous device other for monetary gain and with intent to -- the use of any explosive, firearm or other weapon or dangerous device other than for monetary gain. And with the intent to endanger directly or indirectly the safety of one or more individuals, or to cause substantial damage to property.

Or, a threat, attempt or conspiracy to do any of those first six things I read to you.

For these purposes the term "terrorism" means premeditated, politically motivated violence perpetrated against non-combatant targets by sub-national groups or clandestine agents.

The fourth element is that there was federal jurisdiction over the offense. The Government has to prove that was well. There is federal jurisdiction over the offense if the defendant is a United States national; or after the conduct required for the offense occurred, the defendant was brought into or found in the United States; even if the conduct required for the offense occurred outside the United States; or the offense occurs in or affects interstate or foreign commerce.

With respect to the second option, it doesn't matter if the defendant was brought to the U.S. by law enforcement

personnel. It's sufficient to satisfy this element so long as you find that he was brought into the U.S. after the conduct required for the offense occurred.

With respect to the third option, the Government needs to prove only that there was a minimal affect on interstate or foreign commerce. Any affect, even an indirect or slight one, is sufficient, and that affect may be harmful or beneficial to interstate or foreign commerce.

Now as to Count Nine, to prove the charge of attempting to provide material support to a foreign terrorist organization, the Government has to prove two elements beyond a reasonable doubt.

First, that the defendant intended to commit the crime of providing material support to a foreign terrorist organization.

And Second, that the defendant did some act that was a substantial step in an effort to bring about or accomplish the crime. I already told you what it means to attempt to commit a crime, so I'm not going to repeat that again.

As to Count Eight, conspiring to provide material support to a foreign terrorist organization, the Government has to establish each of the following elements beyond a reasonable doubt.

First, that a conspiracy to provide material support to a foreign terrorist organization, specifically al-Qaeda,

exists.

Second, that the defendant knowingly and intentionally became a member of the conspiracy. Those are the two elements.

As I've already explained those elements of the conspiracy, I'm not going to repeat them here.

If you find that the Government has proven beyond a reasonable doubt that the defendant is guilty on Count Eight; that is, conspiring to provide material support to a foreign terrorist organization, but not that the defendant has provided or attempted to provide material support to a foreign terrorist organization as charged in Count Nine, then you must also evaluate the defendant's possible guilt on Count Nine using the theory of co-conspirator liability that I previously explained. I'll remind you of those elements again as they apply to this Count Nine.

First, that someone in fact committed the substantive crime charged in Count Nine.

Second, that the person or persons who committed the substantive crime charged in Count Nine were members of the conspiracy charged in Count Eight.

Third, that the commission of the substantive crime charged in Count Nine was pursuant to a common plan and understanding that you found to exist among the conspirators.

Fourth, that the defendant was a member of that

conspiracy charged in Count Eight at the time the substantive crime charged in Count Nine was committed.

Fifth, that the defendant could reasonably have foreseen that one of his co-conspirators might commit the substantive crime charged in Count Nine.

If you find that the Government has proven all five of these elements beyond a reasonable doubt, then you may find the defendant guilty of the substantive crime charged in Count Nine, even if the defendant did not personally participate in the acts constituting the crime and even if he did not have actual knowledge of it so long as the offense in Count Nine was reasonably foreseeable to the defendant.

Okay. Just a few brief instructions, ladies and gentlemen, about how to deliberate. I want to give you a little guidance to undertake the difficult job that you're about to undertake. Your function to reach a fair conclusion from the law and the evidence is a vital one. If the Government succeeds in meeting its burden of proof your verdict should be guilty. If it fails, it should be not guilty.

Each of you on the jury has to decide the case for yourself after consideration of the evidence in this case with your fellow jurors. You shouldn't hesitate to change an opinion that, after discussion with your fellow of jurors, appears erroneous. That's the very purpose of jury

deliberation, to discuss and consider the evidence, to listen to the arguments of fellow jurors, to present your individual views, to consult with one another, and to reach an agreement based solely and wholly on the evidence. If you can do so without violence to your own individual judgment.

Your verdict has to be unanimous. That is, all of you must ultimately reach the same conclusion as to each of the nine charges. Although you can reach a unanimous verdict of not guilty on one or more charges and guilty on other charges. However, if after carefully considering all the evidence and the arguments of your fellow jurors, you entertain a conscientious view that differs from the others, you shouldn't yield your conviction simply because you're out numbered. Your final vote has to reflect your conscientious judgment as to how the issues should be decided.

Now, no member of the jury should attempt to communicate with me or any court personnel by any means other than signed writing, sign it on your notepads. I'm appointing Juror Number One as the Foreperson. Any notes will be given by him to the court officer standing outside the door. I'm afraid there is no more money in being the Foreperson, there is not really any real power, just serves as the focal point for the communications with the Court. If you have any questions I'll respond to your request as promptly as I can by having to you return to the courtroom so I can speak with you

in person. I'm not going to communicate with any of you on any subject touching on the merits of case other than here in open court.

In any event, if you send out a note do not tell me or any one else in the note or otherwise how you stand numerically on the issue of the defendant's guilt. Don't even say that in open court until you've reached an unanimous verdict on each count. Now most, if not all, of the exhibits are going to be sent into the jury room with you. If during deliberations you think there was an exhibit and you don't have it, send out a note to the court security officer outside your door and we'll look at that and see if we can get that exhibit for you. If you want to hear read back to you a portion of the testimony, we can do that. But please, if you ask for that be as specific as you possibly can because it takes sometime to go through the transcript and find the portion that you're looking for. So the more specific you are, the less time you'll have to wait to get it. Tell us who the witness is and what particular topic you need to hear read back to you so that it's easier and faster for us to find.

Now the way it's going to work, when you've reached the verdict is this. You're going to send out a note on a piece of note paper by your Foreperson that simply is going to say we have reached a unanimous verdict signed foreperson. Give that to the court officer, the court officer will give it

to me, then I will bring you in.

Now you also have with you in the jury room this verdict sheet, just a series of questions as to each one of the counts, how do you find guilty or not guilty as to each one of the counts. When I bring you back into the courtroom after you sent out your note saying you have reached a unanimous verdict, the Foreperson will bring this form with the completed form. I will then ask you, is it correct that it says in your note that you reached a unanimous verdict as to each count. If you say yes, then I'll take the verdict form from you at that point and I'll read it out loud.

So the verdict form, as I said, it's very straight forward. But for that reason don't infer from the wording of any question on the form or from anything that I said or said in instructing you concerning any of the issues that I have a view as to what your answer should be. As I told you, this is all yours, this case. I have no view. It is your responsibility and obligation.

All right, remember again, that your final vote has to reflect your conscientious conviction as to how the issue should be decided. Your verdict has to be unanimous as to each count. Remember that the parties and I are relying on you to give full and conscientious deliberation and consideration to the issues and evidence before you.

Your oath sums up your duty, and it's this, without

fear or favor, you will truthfully try the issues between these parties according to the evidence given to you in court and the laws of the United States.

All right. Let's have the court officer come forward.

COURTROOM DEPUTY: Raise your right hand.

(Whereupon, the Court Officer was sworn.)

THE COURT: Ladies and gentlemen, you may commence your deliberations. I'm going to ask the last three jurors on the top row to remain there for a minute. Ms. Clarke will come back in after she puts the jurors in the jury room.

MR. RUHNKE: Judge, sidebar before the jury leaves?

THE COURT: Yes.

(Continued on the next page.)

(Sidebar conference.)

THE COURT: Anything I read wrong that needs to be corrected, not a late attempt to redo the instructions?

MR. RUHNKE: No, sir. But we do wish to reserve our objections to any of the objections previously made.

THE COURT: So noted.

MR. RUHNKE: We come to sidebar for that purpose.

MR. MAHER: May we request that your Honor tell the jury one more time so that it's clear that your Honor's displaying the Part Two of the instructions on the computer screen in no way means that Part One and Three are not as important. It was just for their convenience.

THE COURT: That's fine.

(End of sidebar conference.

(Continued on the next page.)

(In open court.)

THE COURT: The only other thing I would mention to you, I put Part Two, the substantive charges, up on the screen because, as you can tell, that was rather complex. I thought it might help to you read along. Don't think for a minute that that section of the instructions is any more important than parts One and Three. You have to consider the instructions all together, all equally important during your deliberations.

Thank you all, the top row may begin deliberations.

(The jury retired to commence deliberations at 11:38 a.m.)

(Jury exits.)

THE COURT: Everyone be seated. I want to thank you and let you know that whatever happens to the case from this point on, having you here is a tremendous security blanket. We could not have done a trial if we were all apprehensive about the possibility of needing you alternates. Because we still may, I'm not going to let you completely go yet. What I'm going to do is this. Ms. Clarke is going to bring you to another room, separate from the jurors. You can stay in that room if you want or can you leave that room and go around the courthouse, if you want. But she's got to have your number so we can get you back here on a moment's notice in case we do need you.